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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 57 Original

STATE OF ILLINOIS,
Movant-Plaintiff,

vs.

STATE OF MICHIGAN
Defendant.

MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF ON BEHALF OF JACK FEDEROFF AND WILLIAM F. EWING, D/B/A WILLIAM EWING ROOFING COMPANY

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No. 57 Original

STATE OF ILLINOIS,

Movant-Plaintiff,

vs.

STATE OF MICHIGAN

Defendant.

CONSENT OF DEFENDANT TO THE FILING OF AMICUS CURIAE BRIEF ON BEHALF OF JACK FEDEROFF AND WILLIAM F. EWING

Now comes the State of Michigan, defendant herein, by its attorney, Harry G. Iwasko, Jr., Assistant Attorney General, and consents to the filing of an amicus curiae brief by Paul B. Newman, attorney on behalf of Jack Federoff, and of counsel to Seymour Mandell, attorney for William F. Ewing, in the above entitled cause.

HARRY G. IWASKO, JR.
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Dated: July 12, 1972.

MOTION FOR LEAVE TO FILE AMICUS BRIEF

Now comes Jack Federoff, by Paul B. Newman, his attorney, and William F. Ewing, doing business as William Ewing Roofing Company by Seymour Mandell, Paul B. Newman, Of Counsel, and respectfully moves this Court for Leave to File a Brief in this case as *Amicus Curiae,* pursuant to United States Supreme Court Rule 42(3). The consent of the attorney for the defendant, State of Michigan, has been obtained, a copy of which is attached hereto, made a part hereof, and to which reference is prayed, but the Attorney for the Movant-Plaintiff, State of Illinois, has refused to consent to the filing of a Brief by these parties as *Amicus Curiae.* Petitioners respectfully represent as follows:

1. Statement of Proceedings

A. Jack Federoff, a resident of the State of Michigan, was in the employ of William F. Ewing, doing business as William Ewing Roofing Company, a Michigan employer, and while being employed in the State of Michigan, on September 6, 1960, fell through the roof of a building under construction and as a result of the injuries sustained, became permanently paralyzed from the neck down.

B. The employer had entered into a contract of Workmen's Compensation Insurance, subject to Michigan law, with the Highway Insurance Company, an Illinois corporation.

C. Prior to the issuance of the policy of Workmen's Compensation Insurance by Highway Insurance Company, Highway Insurance Company entered into a contract of re-insurance with the Peerless Insurance Company, a Connecticut corporation. Pursuant to the terms of the re-

insurance agreement, Highway Insurance Company retained an exposure of $25,000 on any specific loss subsequently suffered, and Peerless Insurance Company, for a percentage of the premiums received, agreed to pay any specific loss in excess of the exposure of Highway Insurance Company. Other pertinent provisions of the reinsurance agreement were that Peerless Insurance Company retained the right to decline any risk, Peerless Insurance Company retained the right to adjust any claim, participate in any suit, and no judgment could be entered against an Insured of the Highway Insurance Company in excess of $25,000 unless Peerless Insurance Company consented to the matter going to trial. In the event of the insolvency of Highway Insurance Company, the full amount of any covered claim allowed would be paid by the Peerless Insurance Company to the Liquidator. Peerless Insurance Company's obligation followed that of the Highway Insurance Company in all respects, and was subject to all terms and conditions of the policy Highway Insurance Company had issued to its insured.

D. The Highway Insurance Company, upon notification of the injury to Jack Federoff, immediately and voluntarily undertook payment of Workmen's Compensation benefits and medical expenses. By 1962, they had expended the total amount of their reserve, and pursuant to the reinsurance agreement, continued to pay benefits, but, in turn, sought reimbursement for all losses from Peerless Insurance Company. Subsequently, and also pursuant to the re-insurance agreement, Peerless Insurance Company filed a Petition before the Michigan Workmen's Compensation Bureau in the name of Highway Insurance Company, for certain relief. They later required a physical examination of Jack Federoff by a physician of their own choice, again in the name of Highway Insurance Company.

E. In June of 1967, upon the insolvency of Highway Insurance Company, compensation payments and payment of medical expenses stopped. In 1968, a supplementary Petition was filed in the Michigan Workmen's Compensation Bureau by Jack Federoff. A Hearing Referee found Jack Federoff entitled to continuing benefits, and that he was totally and permanently disabled. The employer sought an appeal before the Appeal Board of the Workmen's Compensation Bureau. While before the Appeal Board, the employee made a Motion to add Peerless Insurance Company as a party defendant, joined by the employer in the Motion. Peerless Insurance Company appeared specially and contested the Motion. The Appeal Board found that Peerless Insurance Company was a proper party defendant, and that Michigan law required Peerless Insurance Company to continue the benefits afforded to Jack Federoff by the Michigan Workmen's Compensation Act. They further found that payments be made directly to Jack Federoff, as the provisions of the reinsurance agreement to the contrary were void as a matter of Michigan law. The Appeal Board also held that, inasmuch as Highway Insurance Company was still a party to the proceedings, they should have received notice of the Hearing before the Referee. The matter was remanded back to the Referee to afford Highway Insurance Company, or its successor, the Liquidator, and the Peerless Insurance Company an opportunity to be heard.

F. Both Peerless Insurance Company and the Liquidator of Highway Insurance Company sought an appeal to the Michigan Court of Appeals (an intermediate appellate Court). The two appeals were consolidated, and in turn, this proceeding was consolidated with the appeal of John H. Shannon, also pending before that Court. The Liquidator and Peerless Insurance Company participated

in the joint appeal, and contested the matter on its merits. The Michigan Court of Appeals found in favor of Jack Federoff and John H. Shannon.

G. Both Peerless Insurance Company and the Liquidator of Highway Insurance Company appealed the decision to the Michigan Supreme Court. The issues on appeal were the right of Jack Federoff and John H. Shannon to receive payments directly from Peerless Insurance Company, in spite of Peerless Insurance Company's contractual obligation to pay the Liquidator; the full faith and credit which should be afforded to judicial decrees of the Circuit Court in Illinois involving the liquidation proceeding, and Illinois statutes, interstate comity; the immunity of the Liquidator from suit (as an officer of the State of Illinois); and the deprivation of due process in depriving the Liquidator, as successor of Highway Insurance Company and Peerless Insurance Company of valuable property and contract rights. The Michigan Supreme Court found in favor of Jack Federoff and John H. Shannon, and remanded the respective matters to the lower tribunal from which they originated for further proceedings.

H. In view of the Federal constitutional issues raised by both the Liquidator and Peerless Insurance Company in the proceedings before the Michigan Supreme Court, Leave for Certiorari to the United States Supreme Court was available to both of these parties. No application for such leave was made by either of the aggrieved parties.

2. Nature of Applicants Interest

Both Jack Federoff and William F. Ewing have prevailed in bringing the re-insurer into the Workmen's Compensation proceedings, with a ruling that Peerless Insurance Company had re-insured a part of the Workmen's Compensation insurance policy issued by the Highway Insurance Company to William F. Ewing, and covering the injury to Jack Federoff. Peerless Insurance Company will be required to assume the obligation of William F. Ewing to pay Workmen's Compensation benefits to Jack Federoff. It is this decision which the State of Illinois wishes to have held null and void. It should be obvious that if this Court would see fit to hold such a decision null and void, both Jack Federoff and William F. Ewing would suffer a severe financial loss. They are the litigants who have prevailed in this matter, and if anyone were to be added as parties to this suit, as requested by the State of Illinois, they are the most likely ones in the mind of the attorneys representing the State of Illinois. This proceeding is merely another in a long line of vexacious proceedings brought by the various parties interested in the result of the proceedings in the State of Michigan, and are another attempt to disregard the effect of that decision.

3. Inadequacy of the Discussion by the Movant-Plaintiff

A. The liquidator of Highway Insurance Company is an officer of the State of Illinois. He is the Commissioner of Insurance of that State. Insolvency of insurance companies in the State of Illinois occur with such frequency that this State has seen fit to create a separate department known as the Bureau of Liquidations, and charged it with the duties of overseeing and managing the liquidation of

the numerous insurance companies that become insolvent in the State of Illinois. In appearing and contesting the merits of the litigation in Michigan, the Liquidator is a representative of the State of Illnois. The issue of a violation of a treaty between the State of Illinois and the State of Michigan was never raised by the Liquidator in the Michigan proceedings, and this issue is raised for the first time in the instant proceedings.

B. In 1969, while the controversy pending in the Michigan Appellate Courts as to whom was entitled to receive payment from the Peerless Insurance Company as the result of the tragic losses of Jack Federoff and John H. Shannon, a petition was filed by the Liquidator and an Order entered by the Cook County Circuit Court, where the liquidation proceedings were pending. The Order declared that the proceeds of the re-insurance agreement between Highway Insurance Company and Peerless Insurance Company were assets of Highway Insurance Company. The Order also restrained anyone from pursuing any litigation to reach these assets, and further enjoined any Workmen's Compensation Bureau from ordering any payment directly from Peerless Insurance Company to any employee. The petition was never served on Jack Federoff or John H. Shannon, their employers, or the Michigan Workmen's Compensation Bureau. No notice of hearing was given, nor any Order to Show Cause why such an Order should not be entered. The Order was never served on any party whose rights were obviously intended to be affected by this Order. No opportunity was ever afforded anyone to appear and contest the ex parte adjudication that the proceeds of the re-insurance agreement belonged to the Liquidator. The only time the attorneys for these employees and employers were made aware of the existence of the Order was in 1971, when a copy was included in the

Appendix to the Brief on Appeal of the Peerless Insurance Company. It is this ex parte Order, issued with a total absence of due process, that the State of Illinois insists was ignored and violated by the decision of the Michigan Supreme Court.

C. The Peerless Insurance Company has filed an interpleader in the Federal District Court for the Northern District of Illinois, complaining that the Liquidator has refused to abide by the Michigan Supreme Court decision. The Liquidator has filed a counter-claim in this proceeding, claiming a right to the proceeds and that the Michigan decision is null and void. Thus, while one branch of the government of the State of Illinois is forcing the Peerless Insurance Company into a relitigation of the issues resolved by the Michigan Supreme Court decision before a new tribunal, another branch of that State government appears before this Court and seeks a similar remedy. They allege a new and different theory for relief, i.e., violation of a treaty, which was never raised in the earlier proceedings, and has not been raised in the proceedings before the Federal District Court for the Northern District of Illinois. Such a position could never have been raised on a direct appeal to this Court from the final decision of the Michigan Supreme Court.

D. The enactment of "Uniform Acts" by a State may give rise to the desire of a sister State to enact a similar "Uniform Act." In many instances, by the separate acts of sister states, reciprocity in certain areas may be created. This does not give the individual acts of State Legislatures the exalted status of a treaty. There is no treaty between the State of Illinois and the State of Michigan regarding the matter complained of. Each state has merely

enacted a form of a "Uniform Act" involving the disposition of insolvent insurance companies. Such an occurrence cannot require the Courts of one State to interpret the "Uniform Act" to the pleasure of another State, and subvert its interpretation of its own public policy to the satisfaction of a sister State.

E. The State of Illinois does not mention the intended disposition of the proceeds of the re-insurance policy. In the instant cases, the right of the Liquidator to receive money under the terms of its agreement with the Peerless Insurance Company is incohate. Without the filing of a claim by Jack Federoff and John H. Shannon in the liquidation proceedings, the liquidator could not invoke or require the Peerless Insurance Company to pay any sums to the Liquidator specifically for these losses. By the terms of the re-insurance agreement, only the filing of a claim by these injured employees gives rise to an obligation of the Peerless Insurance Company to pay money to the Liquidator. The Liquidator has consistently taken the position that in the event this takes place, the amount of money which the Liquidator would be entitled to receive, only as a result of the filing of these claims, would belong to the general creditors of Highway Insurance Company, two of whom would be Jack Federoff and John H. Shanson. The Liquidator has totally and completely refused to acknowledge that the purpose of acquiring the re-insurance agreement was to create funds with which to pay unusually large claims against Highway Insurance Company. The liquidator further refuses to acknowledge the right of these employees to have the proceeds provided for them with a percentage of the premium dollars paid by their employers to purchase this protection. The Liquidator has consistently refused to recognize the decisions rendered against him in the proceedings in which he participated.

By bringing this suit, the State of Illinois wishes to have the decision of the Michigan Supreme Court held null and void. The immediate benefits of such a ruling would be to the Liquidator, and adverse to the interests of Jack Federoff, John H. Shannon, and their employers. Further, this suit would accomplish indirectly that which the Movant-Plaintiff, by and through its officer, the Liquidator, could not do directly. The Liquidator came to the State of Michigan, one must assume in good faith, participated in its Court proceedings and lost. The government which he represented is not satisfied with the final decision of the Michigan Supreme Court, and is not satisfied with following the usual procedural methods by which this Court might have agreed to review the matter. The effect of these proceedings, should the Movant-Plaintiff have his way, would be to void a decision properly arrived at by the Michigan Supreme Court.

Wherefore, Jack Federoff and William H. Ewing respectfully request permission to file Amicus Curiae Briefs and pleadings in opposition for the Motion of the State of Illinois for relief to file Complaint against the State of Michigan, and should the Court grant such a Motion, to file pleadings and Amicus Curiae Briefs on the merits of the matter.

Respectfully submitted,

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